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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 03 019 54360 Office: VERMONT SERVICE CENTER Date: JUL 13 2005

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist at Qusion Technologies, Inc. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

Counsel describes the petitioner's work:

> [The petitioner] is a Research Physicist (PhD in Physics) who is an expert in the discovery of systems in critical need today to detect minute concentrations of hazardous environmental emissions in real time (that is, when it occurs). This work is a continuation of her research/ experience as a Metallurgical Engineering [sic] . . . whose focus of a interest [sic] the past 13 years is linking manufacturing to the online detection of environmental emissions to maximize environmental protection and manufacturing productivity. Now this work has become of importance in combating terrorism because of the need to detect minute amounts of hazardous chemicals in real time and tied to systems that will automatically neutralize the effectiveness of the poisons. Uniquely, she has also made great contributions to NASA's program on the exploration of space. . . .
>
> Her work has a great impact on the economic growth of the United States, improving the quality of manufacturing production, meeting the defense needs of the US and improving the environment. . . . [S]he has made recognized break-through discoveries for which she is nationally and internationally renowned leading to her attaining a rank in the field that only the to few percent reach [sic]. She is a key scientist whose status in the field has been so characterized by eminent authorities. Uniquely her impact is upon two diverse fields, namely, physics and metallurgical engineering. . . . She is regarded by eminent authorities as unique and irreplaceable.

The petitioner submits letters from several witnesses. All of the witnesses are or were employed by institutions where the petitioner has worked and studied. [redacted]hair of the Research and Development Department at Changsha Research Institute of Mining and Metallurgy, supervises the research group in which the petitioner worked for six years. [redacted]states:

> [The petitioner's] research in my laboratory included the comprehensive use of waste water from steel rolling mills, treatment of gas and dust from steel-smelting mills, new technology and modeling of in-situ extraction of rare earth ores, and development of leaching gold from poor ore, etc.

> I can fully attest to the fact that [the petitioner's] superior research skills and technical know-how have enabled us to make a major breakthrough in finalizing the overall system design and implementation of in-situ experiments. . . .
>
> [The petitioner's] research contributions . . . has [sic] gained her world renown. She has become one of the scientific leaders in the extremely important area of environmental monitoring and control.

Three faculty members from the New Jersey Institute of Technology (NJIT) describe the petitioner's work as a doctoral candidate there. Professor Gordon Thomas states:

> [The petitioner's] Ph.D. project involved the study of integrated photonic sensors, and she has made significant discoveries in this field. . . .
>
> The integrated photonic sensors that [the petitioner] has developed will be useful for in-situ analysis of dangerous organics in the water and air. In comparison, the current off-site analysis techniques are unfeasible in some toxic and high electric field environments. [The petitioner's] research successfully addressed this critical issue. Unlike the conventional collection of environmental sampling, the new devices can operate in either gaseous or aqueous environments. This development has successfully overcome a major barrier of off-site techniques.

Professor Anthony M. Johnson, chair of NJIT's Department of Physics, states:

> [The petitioner's] ground-breaking research laid the foundation for a novel integrated photonic sensor that could potentially be used in a closed loop control manner to reduce environmentally hazardous emissions associated with manufacturing processes through fast response control. . . .
>
> The sensor has been designed to be compact, portable, rugged, and suitable for real-time monitoring of hazardous organics in water or in air. It offers numerous advantages over conventional analytical techniques including small physical size, geometric flexibility, low cost, instrumental reliability, insensitivity to electromagnetic interference, and low power requirements.
>
> [The petitioner] was the key member of this project. She made the important contributions. She designed the experimental process, fabricated the sensor, and characterized the device properties for evaluating the effects of different process parameters on the sensor.

NJIT Professor [redacted] states that the petitioner's "breakthrough discoveries in materials science gained her wide renown." [redacted] describes the petitioner's work on the aforementioned sensor, and adds that the petitioner "was also the key scientist working on free standing membrane that will be used by NASA in the development of the next generation high-caliber telescope. [The petitioner] uniquely contributed to both the integrated optic sensor and membrane. She is regarded in the field as extraordinary." We note that the record contains nothing from NASA to clarify or confirm these assertions.

[redacted] president and CEO of Qusion Technologies, Inc., describes the petitioner's current work with that company:

> Optical communications is [sic] a key technology to provide secure communications. Digital transmission through optical fiber is difficult to intercept, and to interfere with. This allows secure communications that help prevent terrorist attacks on financial transactions. In addition, military and civilian responses to emergency requirements are secure through optical transmission.
>
> To do this, components are needed utilizing arcane physical principles because the time and conditions are beyond those contemplated in the past. . . . In addition to a physics background, it is necessary to understand the physical chemistry of materials in order to fabricate devices that can be used continuously and reliably.
>
> [The petitioner] is the unique, irreplaceable person who has these attributes. . . . For her doctorate dissertation, she discovered arcane physics principles to develop new components that are critical to optical communications. . . .
>
> Here, at Qusion Technologies, Inc., she has developed manufacturing/fabrication technologies for a modulator based on the InP/InGaAs MQW material systems. This modulator is based on the principle of quantum confined stark effect (QCSE) and offers high speed (40Gb/s) at a low drive voltage.

[redacted] calls the petitioner "[a] pioneer in a vital field who has attained a status that only the top few percent reach." [redacted] formerly a member of Qusion Technologies' technical staff, states that the petitioner "has been key scientist [sic] in all aspects of processing for the complex integrated InP modulator." [redacted] seems the petitioner "an indispensable asset to both the device and materials industry and to the United States as a whole."

We note that several witnesses have indicated that the petitioner has earned wide renown in her field, but we must also note that all of these witnesses have close ties to the petitioner. Their statements are not first-hand evidence that the petitioner has earned a reputation beyond the institutions where she has worked and studied. If the petitioner has, indeed, achieved "world renown" as claimed, there should exist evidence of this renown beyond the assertions of her former professors and her employers.

The petitioner submits copies of the petitioner's published articles and abstracts of her conference presentations. These documents, by themselves, show that the petitioner has made her work available, but they are not *prima facie* evidence of the petitioner's influence on the field or of her claimed renown. The petitioner did not submit objective evidence to show the impact of these publications, such as documentation showing heavy citation of her published work.

The director denied the petition, stating that the petitioner had met only the "intrinsic merit" prong of the national interest test set forth in *Matter of New York State Dept. of Transportation*. The director found that "the record is devoid of any independent, contemporaneous documentary evidence that would support [the] claim" that the petitioner has earned "wide renown." The director observed the lack of evidence that other researchers have cited the petitioner's published work.

On appeal, counsel observes that the director denied the petition without first issuing a request for evidence. The director cited 8 C.F.R. § 103.2(b)(8), which indicates that a petition may be denied without a request for evidence if the record contains evidence of ineligibility. The director did not identify any evidence of

ineligibility. The petitioner submits a copy of a memorandum from William R. Yates, Associate Director of Operations, *Requests for Evidence* (May 4, 2004). This memorandum states: "Under 8 CFR 103.2(b)(8), the CIS is only required to issue an RFE . . . when initial evidence is missing. . . . In all other instances, such as when the evidence . . . does not fully establish eligibility, issuance of an RFE is **discretionary**" (emphasis in original). In light of this quoted passage, counsel's submission of the memorandum weakens counsel's claim that the director was obliged to issue a request for evidence.

The most expedient remedy for this dispute is to consider, on appeal, evidence that the director would have considered in response to a request for evidence. The only new evidence submitted on appeal is a printout from the popular search engine http://www.google.com. This printout shows that a search for the beneficiary's name (in Chinese characters) yielded four results. This document, by itself, does not demonstrate "world renown"; rather, it appears to indicate that the petitioner's name is rarely mentioned on Chinese-language pages of the World Wide Web.

Counsel states: "The Adjudicator's denial apparently is based upon an ignorance of the appellant petitioner's identity and field of research. The appellant-petitioner is identified in the very first sentence as being in metallurgical engineering at Yale University. That is not true, nor has any representation to that effect been made." Elsewhere, counsel asserts: "The adjudicator has clearly confused [the petitioner's] application with that of someone else." We note that the petitioner holds two degrees in metallurgical engineering, and counsel has previously acknowledged that the petitioner's present work "is a continuation of her research/experience [in] Metallurgical Engineering." Therefore, to associate the petitioner with metallurgy hardly constitutes gross error by the director. The only error in the sentence cited by counsel is the reference to Yale University. We do not agree with counsel's contention that the "denial . . . is based upon" this mistaken reference to Yale University, or that the decision "is premised on a person other than the petitioner." Elsewhere in the decision, the director makes more accurate statements about the petitioner's work and background. The decision includes a quotation from a witness letter, and this quotation, in turn, includes the petitioner's name. While the reference to Yale University was erroneous, the decision as a whole clearly refers quite specifically to this petitioner, and therefore we categorically reject counsel's claim that the decision "is premised on a person other than the petitioner."

We concur with counsel's objection to the director's finding that the petitioner's work lacks national scope. Scientific research conducted at a major institution, published in national or international journals, is generally not limited to any particular geographic locality. We withdraw this finding by the director, but this is not tantamount to a reversal of the director's decision as a whole.

The director found that "the record is devoid of any independent, contemporaneous documentary evidence that would support [redacted] claim" that the petitioner has earned "wide renown" in her field. On appeal, counsel asks "isn't the writing of an expert like [redacted] independent and contemporaneous evidence?" The answer to counsel's rhetorical question is "no." A letter from Prof. Levy serves as proof of [redacted] opinions regarding the petitioner and her work, but [redacted] *curriculum vitae*, impressive as it may be, does not mean that he speaks on behalf of the entire field. If the petitioner seeks an immigration benefit based on "wide renown" in the field, the burden is on the petitioner to provide objective evidence of that renown. A letter from one of her own former professors is not objective, independent evidence of that renown. Because [redacted] was on NJIT's faculty while the petitioner was a student at NJIT, we need not presume or infer any "renown" to explain [redacted] familiarity with the petitioner and her work. Whether [redacted] truly believes the petitioner to be a renowned researcher is beside the point; we are not obliged to conclude that the petitioner is "renowned" simply because her former professors say that she is. Whatever

objective evidence Prof. Levy may have seen that led him to such a conclusion, that evidence is absent from the record and is, therefore, unavailable for our consideration.

Counsel states that, in finding that the petitioner has shown no influence on the field, the director "ignored evidence to the contrary." The record contains no *evidence* of the petitioner's impact on the field. The record contains several *statements* attesting to this impact, but without exception these statements come from the petitioner's own professors, mentors, employers, and collaborators. As explained above, the opinions of such individuals do not compel a conclusion that researchers at other institutions share those opinions. Counsel's complaint that the director's observation "demeans [the petitioner's] support letters" does not invalidate that observation. As for the petitioner's published work, the very act of publication does not confer impact or influence upon the work published.

Counsel protests that the director relies on standards not set forth in *Matter of New York State Dept. of Transportation*, and therefore the decision is invalid. Specifically, counsel states: "The Adjudicator's denial is based upon her not making 'major advances that have enjoyed widespread implementation in the field." We note that the precedent decision does, in fact, call for "a past history of demonstrable achievement with some degree of influence on the field as a whole." *Matter of New York State Dept. of Transportation* at 219, n.6. Furthermore, section 204(b) of the Act, 8 U.S.C. § 1154(b), permits approval of a petition only if the facts claimed in that petition are determined to be true. The regulations do not restrict the waiver to "world renowned" researchers, but in this particular case, the petitioner has claimed to be "world renowned" without showing that such a claim is credible. The record offers no evidentiary support for such a claim. The available evidence shows that the petitioner is a productive scientist, respected by her collaborators and superiors, but the claim that she is "world renowned" appears to be, to say the least, an exaggeration. Such exaggerations, in turn, necessarily color the light in which we view the witness letters in the record. The burden is not on the director to prove that the petitioner is not "world renowned." Rather, the burden is on the petitioner to demonstrate either that she is "world renowned" as claimed, or that her materials are otherwise credible despite her inability or unwillingness to substantiate this hyperbolic and unsupported claim.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.